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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,579	11/12/2003	Herbert C. Hilicus SR.	2304.001	6666
23405	7590	02/28/2006		
HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203			EXAMINER GRANT, ALVIN J	
			ART UNIT	PAPER NUMBER
			3723	
DATE MAILED: 02/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,579

Applicant(s)

HILICUS, HERBERT C.

Examiner

Alvin J. Grant

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-31 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 3-21 is/are allowed.
- 6) ☒ Claim(s) 22-31 and 34-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 22-29 are objected to because of the following informalities:

The claims as written are unclear as to whether they are dependent or independent, consequently the scope cannot be ascertained.

2. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 22-29** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 22, 24, 26 and 28 the language as written renders the claims indefinite, because it is unclear whether the claims are dependent or independent. If the claim are independent, i.e., the reference to claims 1, 13, 17 and 21 respectively, renders them indefinite since the scope can not be ascertained, if it is a dependent claim, it fails to further limit the parent claims. It is a different statutory class of invention and should be written in conformance with the standard and form prescribed by the USPTO.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 30, 31 and 34-37** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curry 4,306,607.

7. **Referring to claims 30 and 31**, Curry discloses a method of texturizing tread surfaces of a tire, the method comprising; forming a plurality of at least one of slices and grooves but does not disclose a specific depth. However, texturizing involves cutting grooves and slices in tires and it is well known in the art to cut grooves to varying depths which would certainly include about 1/32-inch to 1/16-inch. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have cut the grooves and slices in a tire of Curry to a depth of about 1/32-inch to 1/16-inch while texturizing it. Furthermore, Williams (US Patent No. 4,515,200) teaches that grooves can be cut in tires to a depth ranging from 1/32-inch to 1/16-inch.

Referring to claims 34-37, Curry, as modified above, discloses a method for texturizing tread surfaces of a tire, the method comprising: providing an apparatus for use by an operator for texturizing tread surfaces of a tire, the apparatus comprising: a stand, a tire mount supported by the stand and releasably attachable to the tire, a tire rasp, a tire rasp mount attachable to the tire rasp, a support for pivotally attaching the tire rasp mount to the stand, a driver operably connected to the tire mount and to the tire rasp for

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rotating said tire mount and the tire rasp; and wherein the operator is able to manually move the tire rasp into contact with the tire and apply pressure between the tire rasp and the tire to texturize tread surfaces of the tire; and operating the apparatus to form a plurality of at least one of slices and grooves about 1/32-inch to about 1/16-inch deep (as modified above) circumferentially around portions of the tread surfaces of the tire; texturizing means for at least one of slicing and gouging, hub mount means for rotatably supporting the texturizing means; support means for pivotally attaching the texturizing means to the stand so that the texturizing means is movable toward and away from the tread surfaces of the tire, across the tread surfaces of the tire, and around edges of the tread surfaces of the tire; and drive means operably connected to the tire mount means and to the texturizing means for rotating the tire mount means and the texturizing means; and operating the apparatus to form a plurality of at least one of slices and grooves are about 1/32-inch to about 1/16-inch deep (as modified above) circumferentially around portions of the tread surfaces of the tire; the forming comprises forming a plurality of at least one of slices and grooves using a texturizing hub; and the forming comprises forming a plurality of at least one of slices and grooves using a tire rasp.

Allowable Subject Matter

8. **Claims 1 and 3-21** are allowed.

Response to Arguments

9. Applicant's arguments filed 12/12/05 have been fully considered but they are not completely persuasive.

In response to Applicant's arguments that claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent and further limit a preceding claim, it is still not clear if the claims are dependent or independent forms; and if they are independent they are not in proper form.

Applicant's arguments regarding the Williams reference is moot in view of the new grounds for rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Grant whose telephone number is (571) 272-4484. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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DAVID B. THOMAS
PRIMARY EXAMINER